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Dear Friend of MSCI:

As you know, MSCI has been working with a number of other trade associations and coalitions to fight passage of the deliberately misnamed Employee Free Choice Act, one of the most destructive attacks on worker rights ever proposed. As part of our government affairs efforts, we are continually on the lookout for materials that help explain the issues clearly, yet concisely.

The attached paper, entitled "The Impact of the Employee Free Choice Act On Small and Medium Sized Business," was drafted by Jade West, senior vice president of the National Association of Wholesaler-Distributors and an ally in the fight against EFCA. Because Jade has been so directly involved in work against this proposal, I was among association executives who asked her to summarize her sense of the bill and what it would mean to businesses like those in the metals industry.

Her explanation is clear, concise and, at the same time, a renewed call for all of us to work against this bill. There's a lot at stake. Jade, incidentally, will be a speaker at the 2009 MSCI Carbon Conference later this month, reviewing the many changes she has seen in Washington this year.

Please feel free to use this information as you see fit in your own contacts with members of the U.S. Senate and House, and in discussions with your employees, suppliers and peers.

Best regards,

*Bob Weidner*

## **The impact of the Employee Free Choice Act On Small and Medium Sized Business**

Small and mid-size business should be VERY worried about the possible enactment of the so-called Employee Free Choice Act (EFCA). And smaller business employers should be active in the fight to stop this legislation. Defeating this dangerous legislation is MSCI's top priority in this Congress.

### **Current law versus so-called Employee Free Choice Act:**

- Under current law, if a union conducting an organizing campaign obtains signed cards from 30% of the workers in a workplace indicating interest in union representation, the union can request that the NLRB conduct a certification election;
- If the union obtains signatures from 50%-plus-one of the employees, the union can present those cards to the employer and ask to be recognized;
- The employer then has the right to insist on a National Labor Relations Board (NLRB) – supervised election in which workers vote – *by secret ballot* – on whether they want to be represented by the union;
- If EFCA becomes law, if the union obtains the signatures of 50%-plus-one of the employees, that union *immediately and automatically becomes the collective bargaining agent without any secret ballot* and can demand that the employer begin negotiating a contract;
- If a collective bargaining agreement is not reached within 120 days, the union can demand that the negotiations be referred to binding arbitration, and the decision of the arbitrator would be binding on the employer for two years.

### **Enactment of EFCA would make it easier and much more economical for unions to target small and mid-size businesses, and increase their likelihood of success:**

- Under current law, a union has to be willing to commit resources to organizing a smaller company through a secret ballot election process;
- Under EFCA, organizing small shops is virtually cost-free to the unions, since the organizing can be done – literally – over a weekend;
- Without a secret ballot election, the unions do not have to spend time or money convincing employees to vote “yes;” because ...

*After a successful card check campaign employers would have NO opportunity to talk to their employees to make the case for staying non-union;*

- Negotiating contracts with smaller businesses is often less costly for unions because small employers are much less likely to have experienced labor counsel.

### **How it works in practice:**

In testimony before the House Committee on Education and Labor, and in private briefings with the Management Committee of the Coalition for a Democratic Workplace to which MSCI relates, a former union organizer described how a typical union organizing campaign targeting a smaller business works now, and why it would work so much better for them under EFCA:

- The union identifies the workers in a targeted business;
- Organizers contact the employees over a weekend, at their homes or by inviting them, for example, to a pizza party across the street from the company after work on Friday;
- Organizers obtain as many signatures on “card check” cards as they can over that one weekend;
- On Sunday evening, the union organizers meet, spread the signed cards out on a table and count them;
- If they did not get cards signed by 50% of all the employees, they sort the cards by job description to determine if there are subsets of workers from whom they got enough signatures;
- Using this “unit manipulation,” the union can organize the pickers, or drivers, or stockers, or any group of workers within a company;
- Under current law, they present the cards to the employer who can then insist on a secret ballot election;
- *Under EFCA, on Monday morning the union faxes to the NLRB the signed cards from any subgroup of workers from which they obtained a majority of signed cards;*
- *The union organizers then present the signed cards to the company CEO;*
- *The union becomes – immediately and automatically – the certified bargaining agent for that group of workers;*
- *The employer would have no recourse, and would have to begin negotiating a collective bargaining agreement.*

**The risk to independent business is very real -- small and mid-size businesses are already targeted for union organization campaigns**

The common belief that unions only target large corporations is simply incorrect. Small businesses are already targets. According to National Labor Relations Board data, in 2005 more than 20% of certification elections involved employers with fewer than 10 employees; 70% of the elections involved employers with fewer than 50 employees. In 2007, the average number of employees in NLRB elections was 53, and 74% of elections involved 59 or fewer employees.

**To make this more real:**

- The Teamsters Union is targeting pizza drivers;
- The Starbucks Workers Union has been organizing Starbucks stores since 2004;
- In Pensacola, FL, a Domino's Pizza driver organized 11 of his fellow drivers into a union because, according to press reports, he likes "to sleep late, smoke on the job and listen to the radio" (USA Today, 9/22/2006);
- In a union organizing report in 2005, the Change to Win labor organization noted that they were targeting industries which cannot export their workforce overseas – transportation, ***distribution***, retail, construction, etc....

This is very dangerous legislation, and would restrict employers' ability to run their businesses and deny workers the right to decide in private if they want to be represented by a union. Defeat of EFCA is MSCI's top priority this year.

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*This summary was developed by Jade West, senior vice president, government relations for the National Association of Wholesaler-Distributors. She also serves as executive director of the Wholesaler-Distributor Political Action Committee. This month she will be a featured speaker at MSCI's Carbon Conference.*

*Ms. West is the senior lobbyist for NAW, advocating the interests of the wholesale distribution industry in Washington both on Capitol Hill and with executive branch departments and agencies. As the government affairs director for NAW, West is at the nexus of efforts to ensure that government policy reflects the interests of distributors of all kinds of products.*

*Among other responsibilities, she is on the Management Committee of the Coalition for a Democratic Workplace (CDW), which leads the opposition to organized labor's effort to remove secret ballot elections from union certification elections and force employers into binding "interest arbitration" in negotiating contracts. Prior to joining NAW, Ms. West worked for twenty years as a senior leadership staffer in the United States Senate.*